Koh Boon Yeow v Happy Realty Sdn Bhd

HIGH COURT (MELAKA) — CIVIL APPEAL NO 11–27 OF 2001
AHMAD MAAROP JC
31 DECEMBER 2001

Landlord and Tenant *— Controlled premises — Recovery of possession — Termination of premises before expiry of transitional period — Whether valid — Meaning of 'deemed tenancies' — Whether right to vacant possession accrued upon expiry of transitional period — Control of Rent Act 1966 ss 6(1), (2), 8(1), 11(1) & (2)*

The respondent was the registered owner of certain premises in Melaka and the appellant was the tenant of the respondent. The premises was a controlled premises under the Control of Rent Act 1966 ('the Act'). Pursuant to a verbal tenancy made in 1999 between the respondent and the appellant, the respondent agreed to rent out the premises to the appellant. By a notice date 20 October 1999 issued by the respondent's solicitor, the appellant was asked to deliver vacant possession of the premises within three months from the date of service of notice. The notice was served on the appellant on 23 October 1999. The respondent alleged that although the notice had expired on 31 January 2000, the appellant refused and/or neglected to deliver vacant possession of the premises to the respondent. The respondent filed an application for summary judgment under O 26A of the Subordinate Court Rules 1980, asking for vacant possession of the premises, mesne profit, interest and cost. The application was granted by the learned magistrate. Being dissatisfied with the decision, the appellant appealed to this court. The issue before the court was whether the notice dated 20 October 1999 and served on the appellant on 23 October 1999 was valid.

Held, allowing the appeal:

(1) Upon the expiry of the transitional period, all 'deemed tenancies' shall ceased to be in force and the landlords shall thereafter, have the right to vacant possession of the premises, and be entitled to rental and arrears of rental accrued and remaining unpaid, under s 11(1) of the Act. The right to vacant possession and arrears of rental accrued not upon the expiry of the transitional period but after it. This was because of the presence of the words 'selepas itu (thereafter)' under that section. If the legislature had intended the right to vacant possession to accrue upon the expiry of the transitional period, the words 'selepas itu (thereafter)' would not have been used (see p 313C–D).

(2) Section 11 of the Act must not be considered in isolation, in construing s 11, its connection with other section of the Act must be considered (see p 313H); *Yeong Peng Wah v Bahal Singh* [1961] MLJ 216 and *Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v Pendakwa Raya* [2001] 3 MLJU 359 followed.

(3) The deemed tenancies created under s 6(1) of the Act shall be in force from 1 September 1997 to 31 December 1999. During this period, the tenancies could only be terminated and thus vacant possession surrendered by mutual consent under s 6(2) of the Act. The only other reason which could give a landlord of a deemed tenancy, the right to recover vacant possession was the non-payment of rent as provided under s 8 of the Act. Unless the circumstances in s 6(2) or 8(1) can be proven, the tenants of the deemed tenancies were assured of and entitled to possession of the premises in question until 31 December 1999. During that period unless either the circumstances under s 6(2) or 8(1) could be proven to be applicable, the tenants could not be asked to give vacant possession of the premises. That this was guaranteed by the Act was clear from s 9 (see p 314C–E).

(4) The earliest date that the notice could be validly given was on 1 January 2000. A tenant of a deemed tenancy was entitled to be given three months period from the date of service of the notice, to make the necessary preparation to hand over vacant possession (see p 314G–H).

(5) The purpose of serving the notice under s 11(2) of the Act was not to terminate the tenancy. In fact, there was no necessity of terminating any tenancy because on 31 December 1999, the tenancy would automatically ceased to be in force. The purpose of sending the notice under s 11(2) was actually to give sufficient notice on the tenant to vacate the premises so that the landlord could enjoy the right to vacant possession provided under s 11(1) of the Act (see p 315A–B).

[Bahasa Malaysia summary

Penentang merupakan pemilik berdaftar premis tertentu di Melaka dan perayu adalah penyewa penentang. Premis tersebut adalah premis terkawal di bawah Akta Kawalan Sewa 1966 ('Akta tersebut'). Menurut perjanjian lisan yang dibuat pada tahun 1999 di antara penentang dan perayu, penentang bersetuju menyewa premis tersebut kepada perayu. Melalui satu notis bertarikh 20 Oktober 1999 yang dikeluarkan oleh peguamcara penentang, perayu diminta menyerah milikan kosong premis tersebut tiga bulan dari tarikh penyampaian notis. Notis disampaikan kepada perayu pada 23 Oktober 1999. Penentang mengatakan bahawa walaupun notis tersebut telah luput pada 31 Januari 2000, perayu enggan dan/atau gagal menyerah milikan kosong premis tersebut kepada penentang. Penentang memfailkan satu permohonan untuk penghakiman terus di bawah A 26A Kaedah-Kaedah Mahkamah Rendah 1980, meminta milikan kosong premis tersebut, mesne profit, faedah dan kos. Permohonan tersebut dibenarkan oleh majistret tersebut. Tidak berpuas hati dengan keputusan tersebut, perayu mengemukakan rayuan kepada mahkamah ini. Isu di hadapan mahkamah adalah sama ada notis

bertarikh 20 Oktober 1999 dan disampaikan kepada perayu pada 23 Oktober 1999 adalah sah.

Diputuskan, membenarkan rayuan tersebut:

(1) Apabila tempoh peralihan luput, segala 'deemed tenancies' hendaklah berhenti berkuatkuasa dan tuanpunya hendaklah selepas itu, mempunyai hak memperolehi milikan kosong premis tersebut, dan berhak menerima sewa dan tunggakan sewa yang terakru dan masih belum dijelaskan, di bawah s 11(1) Akta tersebut. Hak mendapat milikan kosong dan tunggakan sewa terakru bukan pada masa tempoh peralihan luput tetapi selepasnya. Ini adalah disebabkan kewujudan perkataan-perkataan 'selepas itu (thereafter)' di bawah seksyen tersebut. Sekiranya badan perundangan berhasrat hak mendapat milikan kosong terakru apabila tempoh peralihan luput, perkataan-perkataan 'selepas itu (thereafter)' tidak mungkin digunakan (lihat ms 313C–D).

(2) Seksyen 11 Akta tersebut tidak boleh dipertimbangkan secara berasingan, dalam pentafsiran s 11, kaitannya dengan seksyen-seksyen lain Akta tersebut mestilah diambil kira (lihat ms 313H); *Yeong Peng Wah v Bahal Singh* [1961] MLJ 216 dan *Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v Pendakwa Raya* [2001] MLJU 359 diikut.

(3) Penyewaan yang diiktiraf diwujudkan di bawah s 6(1) Akta tersebut berkuatkuasa daripada 1 September 1997 hingga 31 Disember 1999. Dalam tempoh ini, penyewaan tersebut hanya boleh ditamatkan dan justeru itu milikan kosong diserah melalui kebenaran bersama di bawah s 6(2) Akta tersebut. Satu-satunya alasan yang lain yang boleh memberi tuanpunya suatu penyewaan diiktiraf hak, untuk mendapat balik milikan kosong adalah kegagalan membayar sewa seperti yang diperuntukkan di bawah s 8 Akta tersebut. Melainkan keadaan-keadaan dalam s 6(2) atau 8(1) boleh dibuktikan, penyewa penyewaan yang diiktiraf tersebut dijamin dan berhak memperolehi milikan premis berkenaan sehingga 31 Disember 1999. Dalam tempoh itu, melainkan sama ada keadaan di bawah s 6(2) atau 8(1) boleh dibuktikan terpakai, penyewa-penyewa tidak boleh diminta memberi milikan kosong premis tersebut. Hakikat bahawa ini dijamin oleh Akta tersebut adalah nyata daripada s 9 (lihat ms 314C–E).

(4) Tarikh paling awal yang notis ini boleh diberi secara sah adalah pada 1 Januari 2000. Penyewa suatu penyewaan yang diiktiraf berhak diberikan tempoh tiga bulan dari tarikh penyampaian notis untuk membuat persediaan yang perlu untuk menyerah milikan kosong (lihat ms 314G–H).

(5) Tujuan notis tersebut disampaikan di bawah s 11(2) Akta tersebut bukanlah untuk menamatkan penyewaan. Malahan tiada

keperluan untuk menamatkan apa-apa penyewaan kerana pada 31 Disember 1999, penyewaan tersebut akan luput secara automatik. Tujuan penyampaian notis di bawah s 11(2) sebenarnya adalah untuk memberi notis yang secukupnya kepada penyewa supaya mengosongkan premis tersebut agar tuanpunya boleh menikmati hak milikan kosong yang diperuntukkan di bawah s 11(1) Akta tersebut (lihat ms 315A–B).] A B

Notes

For cases on recovery of possession of controlled premises, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 276–644. C

Cases referred to

Becke v Smith [1936] 2 M & W 191 (refd)
Jacks (William) & Co v Palmer's Shipbuildng, Iron Co (1928) 98 LJKB 366; 140 LT 473; 34 Com Cas 107 (refd) D
Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano [1997] 1 MLJ 94 (refd)
Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v Pendakwa Raya [2001] MLJU 359 (folld)
Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Liau Nyun Fui [1991] 1 MLJ 350 (refd) E
Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor [1999] 2 AMR 2337 (refd)
Yeong Peng Wah v Bahal Singh [1961] MLJ 316 (folld)

Legislation referred to F

Control of Rent Act 1966
Control of Rent (Repealed) Act 1997 (Act 572) ss 6(1), (2), 8(1), 9, 11(1), (2), (3)
Federal Constitution art 76(4)
Subordinate Court Rules 1980 O 26A G

Appeal from: Summons No 72–590 of 2000 (Magistrate's Court, Melaka)

KP Ng (*KP Ng & Amardas*) for the appellant/defendant.
Ahmad bin Musthafi (*Koh Kim Leng & Co*) for the respondent/plaintiff. H

Ahmad Maarop JC: The plaintiff ('respondent') is the registered owner of premises No 2, Jln Kee Ann, Ground Floor, 75100 Melaka. The defendant ('appellant') was the tenant of the respondent. The premises was a controlled premises under the Control of Rent Act 1966 ('the Act'). Pursuant to a verbal tenancy agreement made in 1999 between the respondent and the appellant, the respondent agreed to rent out the premises to the appellant with a monthly rental of RM367.83. By a notice dated 20 October 1999 issued by the respondent's solicitor, the appellant I

was asked to deliver vacant possession of the premises within three months from the date of service of the notice. The notice was served on the appellant on 23 October 1999. The respondent alleged that although the notice had expired on 31 January 2000, the appellant refused and/or neglected to deliver vacant possession of the premises to the respondent. The respondent therefore prayed for vacant possession of the premises, mesne profit and costs. The appellant filed his statement of defence (pp 15–17 of the appeal record).

The respondent filed an application for summary judgement (pp 18–20 of the appeal record) under O 26A of the Subordinate Court Rules 1980 ('the SCR') asking for vacant possession of the premises, mesne profit, interest and costs.

On 17 July 2001, the learned magistrate, Magistrate's Court Melaka allowed the respondent's application with costs (pp 59–40 of the appeal record). Being dissatisfied with the said decision, the appellant preferred an appeal to the High Court.

At the outset of the hearing of the appeal, learned counsel for the appellant informed the court that the appellant and the respondent agreed that the premises in question was a controlled premises under the Act. Starting his submission, learned counsel for the appellant stated that there was only one issue for the court to consider in this appeal, ie whether the notice dated 20 October 1999, sent by the respondent asking the appellant to deliver vacant possession of the said premises was valid. It was the contention of the appellant that the notice was premature and invalid. According to the appellant, the effect of Control of Rent (Repealed) Act 1997 (Act 572) ('the 1997 Act'), was that all tenancies between landlords and tenants existing before the date of repeal of the Act (1 September 1997), shall be deemed to have ceased, and that new tenancies were created by law during the transitional period (1 September 1997–31 December 1999). According to the learned counsel for the appellant, upon the expiry of the transitional period on 31 December 1999, all the new tenancies created by the 1997 Act (under s 6) ceased to be in force and thereafter, the landlords had the right to vacant possession of the premises. In order to exercise their right, landlords had to serve notices under s 11(2) of the 1997 Act on the tenants, giving the tenants three months' notice to vacate the premises. In the case before the court, the notice dated 20 October 1999 was served on the appellant on 23 October 1999 (before 31 December 1999), but the three months period given in the said notice expired on 31 January 2000 (ie after the expiry of the transitional period). Learned counsel for appellant contended that the three months' notice could only be given after the expiry of the transitional period (ie 31 December 1999). He relied on the usage of the words 'upon expiry of the transitional period' (selepas habis tempoh peralihan) and 'thereafter' (selepas itu) under s 11(1) of the 1997 Act, which he submitted, made it clear that the right of the respondent (landlord) to vacant possession of the premises only arose and could be exercised after 31 December 1999. According to him, the word 'thereafter' (selepas itu) means 'afterward, later'. For this he relied on *Black's Law Dictionary* (7th Ed, 1999), the

case of *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Liau Nyun Fui* [1991] 1 MLJ 350 and the case of *Jacks (William) & Co v Palmer's Shipbuildng, Iron Co* (1928) 98 LJKB 366, 140 LT 473; 34 Com Cas 107 (CA), *The English Empire Digest*, Replacement Vol 12, 1973 Reissue. A

According to learned counsel for the appellant, in the lower court, the learned magistrate held that since s 11(2) of the 1997 Act did not say when the notice under the section should be issued, the notice could be issued at any time as long as the three months period given in the notice expired after 31 December 1999. Learned counsel for the appellant contended that such an interpretation would defeat the intention of the legislature in providing for the giving of the three month notice under s 11(2) of the 1997 Act. According to him, by virtue of ss 6(1) and 11 of the 1997 Act, it was the intention of Parliament that tenants who were in actual occupation of controlled premises continue to have and enjoy possession of the premises until 31 December 1999. Thereafter, if landlords wanted to exercise their rights to have vacant possession they must give three months' notice under s 11(2). Learned counsel for the appellant submitted that if the magistrate was right, there would be situations where tenants would be deprived of the three months period. B C D

The thrust of the respondent's submission was that for notice under s 11(2) of the 1997 Act to be validly given, there must be a valid tenancy existing. Learned counsel for the respondent contended that if a notice under s 11(2) was given on or before 31 December 1999, then the tenancy created under s 6(1) of the 1997 Act would still be in existence and could be validly terminated. But if a notice under s 11(2) was given after 31 December 1999, then there was no tenancy (in existence) to be terminated. Learned counsel for the respondent submitted that in this case the notice issued to the appellant was valid because on the date it was issued, the tenancy was still existing. According to him, even though the three months period in the notice expired on 5 January 2000 (after the expiry of the transitional period), it did not matter because the appellant was still given the three months period which the legislature had intended to give to tenants like the appellant. According to learned counsel for the respondent, the right to vacant possession accrued only after 31 December 1999. E F G

The issue before the court was whether the notice dated 20 October 1999 and served on the appellant on 23 October 1999 was valid. This would depend on the interpretation of the relevant provisions under the 1997 Act. H

The 1997 Act was enacted pursuant to art 76(4) of the Federal Constitution and it came into force on 1 September 1997. It repealed the Act. It also provides for transitional provisions, in this connection. Section 5 of the 1997 Act defines 'transitional period' to mean 'the period commencing on 1 September 1997 and ending on 31 December 1999'. Section 3 of the 1997 Act provides that upon the repeal of the Act, any tenancy repeal of the Act shall forthwith be deemed to have ceased. I

A Section 6 of the 1997 Act provides that:

> (1) Walau apa pun s 5, mana-mana penyewa-penyewa, penyewa kecil atau penyewa bersama yang:
>
> (a) telah sebenarnya menduduki premis pada tarikh Akta dimansuhkan; dan
>
> B (b) jika tidak kerana termansuhnya Akta, boleh terus menduduki premis dengan sah,
>
> hendaklah disifatkan telah membuat suatu penyewaan dengan tuan rumah dari tarikh Akta dimansuhkan.
>
> (2) Melainkan jika ditamatkan terlebih dahulu melalui persetujuan bersama pihak-pihak, penyewaan yang disifatkan telah dibuat di bawah sub-s (1)
>
> C hendaklah berkuatkuasa sehingga habis tempoh peralihan.

In other words, although under s 3, any tenancy between a landlord and a tenant existing before the date of repeal of the Act, shall be deemed to have ceased, any tenant, sub-tenant or joint-tenant who was in actual occupation of the premises on the date of repeal of the Act, and could have lawfully
D continued to occupy the premises if the Act was not repealed, shall be deemed to have entered into a tenancy with the landlord as from the date of the repeal of the Act. In this judgement, (using the term used in the heading of s 6 of the English version of the 1997 Act), I will refer to the tenancies created thereunder as 'deemed tenancies'.

E It is clear from s 6(2) of the 1997 Act, that a tenancy deemed to have been entered into s 6(1), shall remain in force until 31 December 1999. Under s 8 of the Act, the amount of rental to be paid monthly by the tenants of the 'deemed tenancies' created pursuant to s 6(1) of the 1997 Act shall be determined according to the formula set out in the Schedule to the Act.

F Section 8 of the 1997 Act provides the provisions applicable in cases of non-payment of rental for the 'deemed tenancies'. The section provides:

> (1) Sekiranya penyewa tidak membayar sewa atau bayaran sewanya tertunggak semasa tempoh peralihan, tuan rumah hendaklah mempunyai hak untuk mendapat milikan kosong premis daripada penyewa tanpa membayar apa-apa pampasan.
>
> G (2) Dalam menggunakan haknya untuk mendapat milikan kosong premis di bawah sub-s (1), tuan rumah hendaklah mematuhi prosedur yang dinyatakan dalam sub-s 11(2) dan 11(3) bagi mendapat kembali milikan kosong premis.
>
> (3) Apa-apa pertikaian yang berbangkit daripada perjalanan sub-s (1) boleh
> H dirujukkan oleh penyewa kepada Tribunal Penyahkawalan di bawah perenggan 10(1)(b) sebelum habis tempoh tiga bulan yang diperuntukkan dalam perenggan 11(3)(a).

It is clear that under s 8, non-payment or arrears in payment of rental gives the landlord of a 'deemed tenancy' the right to vacant possession of the premises from the tenant. Apart from non-payment or arrears in payment
I of rental provided under s 8(1), no landlord of any deemed tenancy is entitled to recover vacant possession of the premises for any other reason. This is made clear by s 9 of the 1997 Act which provides:

Kecuali bagi hak untuk mendapat milikan kosong premis di bawah s 8, tiada seorangpun tuan rumah berhak mendapat kembali milikan kosong premis bagi apa-apa sebab lain semasa tempoh peralihan.

What would happen upon the expiry of the transitional period under the 1997 Act is answered by s 11 which reads:

(1) selepas habis tempoh peralihan di bawah sub-s 5(1) atau 5(2), mengikut mana-mana yang berkenaan, semua penyewaan yang disifatkan telah dibuat antara tuan rumah dengan penyewa di bawah sub-s 6(1) hendaklah terhenti berkuatkuasa dan tuan rumah hendaklah selepas itu —

(a) mempunyai hak mendapat milikan kosong premis daripada penyewa tanpa membayar apa-apa pampasan; dan

(b) berhak mendapat apa-apa sewa yang terakru dan masih belum dibayar daripada penyewa pada tarikh habis tempoh peralihan.

(2) Seseorang tuan rumah yang berhasrat untuk menggunakan haknya di bawah perenggan (1)(a) hendaklah menyampaikan kepada penyewa suatu notis supaya mengosongkan premis.

(3) Notis yang disebut dalam sub-s (2) —

(a) hendaklah memperuntukkan tempoh tiga bulan bagi penyewa mengosongkan premis itu; dan

(b) boleh disampaikan kepada penyewa atau mana-mana orang yang diberikuasa untuk menerima penyampaian notis itu bagi pihaknya, yang kemudian daripada ini disebut 'orang yang kepadanya penyampaian hendak dibuat':

(i) dengan menyerahkannya sendiri kepada orang yang kepadanya penyampaian hendak dibuat;

(ii) dengan menghantarnya melalui pos berdaftar yang dialamatkan kepada orang yang kepadanya penyampaian hendak dibuat di tempat kediaman orang itu yang lazim atau yang akhir diketahui; atau

(iii) dengan melekatkannya di suatu bahagian yang mudah dilihat di premis yang berhubungan dengannya jika penyampaian ke diri atau melalui pos berdaftar tidak dapat dibuat kepada orang yang kepadanya penyampaian itu hendak dibuat.

Before moving on to consider the effect of s 11 of the 1997 Act, the court reminds itself that it is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that is at variance with the intention of the legislature (to be collected from the statute itself) or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further (Parke B in *Becke v Smith* [1936] 2 M & W 191 at p 195, *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor* [1999] 2 AMR 2337). In *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94, at pp 100–101, the Federal Court said:

The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the

words appearing in the particular enactment. Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that: 'As a general rule, a court will adopt that construction of a statute which will give some effect to all of the words which it contains', per *Gibbs J in Beckwith v R* (1976) 12 ALR 353 at p 337.

In my view, considering the clear words in s 11 in the light of the authorities adverted to above, particularly the words 'selepas habis tempoh' (upon the expiry of) and 'selepas itu' (thereafter) in s 11(1) of the 1997 Act, the meaning of that section is unmistakable. Upon expiry of the transitional period, all 'deemed tenancies' shall cease to be in force and the landlords shall thereafter (ie after the expiry of the transitional period), (a) have the right to vacant possession of the premises, and (b) be entitled to rental accrued and remaining unpaid, under s 11(1), the right to vacant possession and arrears of rental accrues not upon the expiry of the transitional period, but after it. This is because of the presence of the words 'selepas itu' (thereafter) under that section, if the legislature had intended the right to vacant possession to accrue upon the expiry of the transitional period, the words 'selepas itu' (thereafter) would not have been used. In other words, on 1 January 2000, the deemed tenancies are no longer in force and with effect from that date, the landlords shall have the right to vacant possession of the premises as well as any rental which had accrued or remaining unpaid. However, s 11(1) must be read together with s 11(2) of the 1997 Act. Section 11(2) requires that a landlord who wishes to exercise his right [to vacant possession], is to serve on the tenant a notice to vacate the premises, s 11(3) requires the notice to provide for a period of three months for the tenant to vacate the premises. The requirements under s 11(2) and (3) of the 1997 Act are mandatory, it is noted that s 11 is silent as to when the notice must be given, and this had given rise to the dispute in this appeal. Learned counsel for the appellant contended that the notice under s 11(2) could not be given on or before 31 December 1999, because to do so would deprive the appellant of the three month notice which ran from 1 January 2000, which the legislature had intended to give to the deemed tenants like the appellant. Learned counsel for the respondent contended that the notice under s 11(2) could be given at any time. According to him, the most important thing was that the tenant must be given three months' notice. As long as the tenant was given three months' notice, it did not matter even if the notice was given on or before 31 December 1999.

Admittedly, s 11 does not specify when the notice under s 11(2) must be or could be given. However, in my view, s 11 must not be considered in isolation. In construing s 11, its connection with other sections in the 1997 Act must be considered, particularly ss 1 to 9 (*Yeong Peng Wah v Bahal Singh* [1961] MLJ 316 and *Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v Pendakwa Raya* [2001] MLJU 359). In *Yeong Peng Wah v Bahal Singh*, at p 317 Ong J said:

> I need hardly add that it is a cardinal rule of construction that in construing any particular clause in a statute one has to look to its connection with other clauses in the same statute, and the conclusions which, on comparison with other clauses, many reasonably and obviously be drawn, if comparison of one clause with others in the statute makes a certain proposition clear and undoubted, the Act must be construed so as to make it a consistent and harmonious whole, if after all it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail.

When s 11 is considered in the light of the other relevant sections in the 1997 Act adverted to earlier, the intention of the legislature in enacting the 1997 Act is clearly discernible from the clear words of the relevant sections. The deemed tenancies created under s 6(1) shall be in force from 1 September 1997 to 31 December 1999. During this period, the tenancies can only be terminated land, thus vacant possession surrendered by mutual consent under s 6(2) of the 1997 Act. The only other reason which can give a landlord of a deemed tenancy the right to recover vacant possession is the non-payment of rent as provided under s 8 of the 1997 Act. In my view, unless the circumstances under ss 6(2) or 8(1) can be proven to be applicable, the tenants of the deemed tenancies are assured of and entitled to possession of the premises in question until 31 December 1999. During that period, unless either the circumstances under ss 6(2) or 8(1) of the 1997 Act are applicable, they could not be asked to give vacant possession of the premises. The landlords would have to wait until after the expiry of these tenancies on 31 December 1999. That this is guaranteed by the 1997 Act, is clear from s 9. The tenants of the deemed tenancies were entitled to remain on the premises until 31 December 1999. I shall refer to this as the first assurance. This assurance is reinforced by s 11(1) of the 1997 Act when it provides that upon the expiry of the transitional period (on 31 December 1999), all deemed tenancies shall cease to be in force, and the landlords shall thereafter have the right to vacant possession and be entitled to any rental in arrears. As I have held earlier, that right did not accrue on 31 December 1999 but on 1 January 2000. Section 11(2) then comes into play. That section requires that any landlord who wishes to exercise the right to have vacant possession must serve on the tenant a notice to vacate the premises. Next, s 11(3)(a) requires that this notice shall provide for a period of three months for the tenant to vacate the premises. For reasons which I have alluded to earlier, the earliest date that this notice could be validly given was on 1 January 2000. In other words, a tenant of a deemed tenancy was entitled to be given a three months period from the date of service of the notice, to make the necessary preparations to hand over vacant possession, and that the three months period must be provided in the notice which could only be served on the tenant on 1 January 2000 or any date thereafter. This, in my view is the second assurance intended to be given by the legislature and entrenched in the provisions under the 1997 Act. To hold that the notice under s 11(2) of the 1997 Act could be given at any time, even before 31 December 1999, would, to my mind, render the first and the second assurance which the legislature had intended to provide under the 1997 Act nugatory. It was contended on behalf of the respondent

that the notice under s 11(2) of the 1997 Act must be served on 31 December 1999 at the latest. It was submitted that if it was served on 1 January 2000 or any subsequent date, there was no tenancy to terminate, because by then the deemed tenancy in this case had ceased to be in force. With respect, I do not agree,. In my view, the purpose of serving the notice under s 11(2) was not to terminate the tenancy. In fact, there is no necessity of terminating any tenancy because on 31 December 1999, the tenancy would automatically cease to be in force. The purpose of sending the notice under s 11(2), was actually to give sufficient notice on the tenant (the appellant) to vacate the premises, so that the landlord (the respondent) could enjoy the right to vacant possession provided under s 11(1) of the 1997 Act.

All the appellant needed to do in order to succeed in this case was to convince the court that there were triable issues. I have no hesitation in concluding that the appellant had discharged that burden. This case had raised questions of law relating to the interpretation of s 11 of the 1997 Act, but the material facts are clear and not in dispute. I have considered them in the light of the interpretation of s 11 of the 1997 Act which I have explained earlier. In the circumstances, I hold that since the notice under s 11(2) in this case (p 32 of the appeal record) was served on 23 October 1999, it was not a valid notice. The respondent had therefore failed to comply with the mandatory statutory requirement under s 11(2) and (3) of the 1997 Act to entitle it to the remedies it had sought for. In the circumstances, the decision of the learned magistrate made on 17 July 2001 cannot stand and is hereby set aside.

In the result, the appeal is allowed with costs.

Appeal allowed.

Reported by Peter Ling